

**Before the Idaho State Department of Education
IDEA Due Process Hearing**

In the Matter of:

██████

Student.

Case #H-09-06-19

DECISION AND ORDER

This matter came up for hearing on the 28th of July, 2009, on the request for Due Process hearing previously filed by the district.

At issue is the placement of the student, who is currently 19 years of age¹ and receiving transition services pursuant to his May 28, 2009 IEP.

Brief Placement and Procedural History

In prior years, the district has been providing the student's educational and other services at an alternative high school pursuant to prior IEP team decisions. The student has essentially completed all academic course work available at that facility, and has earned enough credits to graduate from that program with accommodations. The student does however enjoy that location and has friends there.

In May, 2009, the IEP team reviewed the student's placement, and looked at transferring him to its post secondary transition program (hereinafter PSTP) which is

¹ Even though student rights transfer to the student at the age of majority, *see* 34 CFR 300.320(c), in this case the parent has been appointed guardian of the student and continues to advocate for the student.

housed at another local high school campus, although in separate facilities there. The student completed a “transition planning inventory” in January, 2009 which the team utilized in making this decision.

The benefit to the student would be to provide him with the vocational and life skills programs which the district offers in the PSTP program, primarily in the mornings. Additionally, the team planned to provide continuing educational programs in the areas of math and English during the afternoons.

The parent objected, at the IEP team meeting and thereafter, to the placement in the PSTP program, contending that the current alternative high school is a better placement for reasons discussed below, and suggested that a community program could be utilized in the afternoons as an adjunct to continued educational services at the current facility, to provide the life skills and transition programming necessary for the student.

The parent’s concerns are threefold. First, she alleges that the student is vulnerable to sexual and physical assault and fears he will not be safe at the proposed program site. Second, she suggests that the student has difficulties with change and fears that movement to another facility would impede his progress. Third, she alleges that the program she has proposed would provide superior transition services and would be better for the student. Although evidence was not really presented on this point, it also appears that the student’s elder brother receives services similar to what she is proposing, which would make such a placement for the younger sibling more advantageous to the family in scheduling and transportation.

Because the parent expressed her strong opposition to the plan adopted by the IEP team, the District filed a request for due process hearing to address this issue.

Issue to Be Decided

IDEA requires that districts provide transition services to those students who are eligible to receive them, up to the age of 21. For example, *see* 24 CFR 300.320(b), which indicates that IEP teams must, beginning when the student reaches the age of 16 years, determine and implement appropriate transition services to allow the student to obtain training and education in vocational, employment, and independent life skills. As noted, the entitlement to these services is not in question; the main issue is whether the program adopted by the IEP team is appropriate for this particular student. The parent argues that the proposed program is not well suited to the student's needs. A secondary issue is where continued academic coursework should be offered.

Findings of Fact

1. The student is nineteen years of age as of the date of hearing, and his parent has been appointed through court processes as his legal guardian.

2. The student was last determined eligible in a three year reevaluation dated 11-01-07 under the category of "Multiple disabilities (PPD-NOS, Emotional Dist). **PSD 10**. He has "Autism Spectrum Disorder", which results in learning disabilities as well as emotional disabilities. This was supported by complete psychological testing, **PSD 8**, as well as academic testing (Woodcock-Johnson) **PSD 9**.

3. A functional Behavior Assessment as well as a Behavior Intervention Plan were completed on 10-24-08. **PSD 12, 13**.

4. In prior years, the student had been attending school at an alternative high school program, which he enjoyed and where he has made friends with a variety of different aged children, but some of whom are significantly younger than he is. The student testified at the hearing that he wanted to stay at that location; however, he has

also on prior occasions indicated that he was getting bored there and wanted to move on. See, e.g., **PSD 23**, p. 2; **PSD 16** (notes).

5. The student has completed enough educational coursework to graduate from that alternate high school, such that there is little in the general curriculum he has not already been exposed to. **PSD 19, 28**. See also, e.g., **PSD 14**, p. 5; **PSD 23**, pp.3-4.

6. In the spring of 2008, the IEP team had discussed a fall 2008 transition of the student to the PTSP, and adopted an IEP amendment so indicating. **PSD 18**. However, the parent objected, requesting that any such transition be “gradual”. **PSD 15**. (Exhibit 15 is undated, but it is presumably the objection noted in Exhibit 16). Other emails indicate that the parent and the special education director had been discussing the transition to the PSTP since the spring of 2007. **PSD 1-6**. In any event, the student remained at the alternate high school for the 2008-2009 year.

7. In the IEP meeting of October 24, 2008, the team discussed related services and made a note of “[REDACTED]”, as well as another similar note. [REDACTED] is a private community based organization which provides vocational training to a broad spectrum of disabled persons. **PSD 11**. The same document indicates that the school special education program director, as well as the parent, were to investigate the suitability of [REDACTED] services. *Id.*, pp.2, 8. The October IEP meeting was attended by the “career development coordinator” for the district.

8. In that same meeting, transfer of rights was discussed, and it was noted that the mother is the legal guardian of the student. *Ibid.*

9. The district completed a “Transition Planning Inventory” on 1/09/09, according to IEP team data **PSD 23**, p.2., but the inventory was incomplete and in need of the student’s further input into interest and aptitude categories for consideration of entry level

job placements. (The inventory itself was not provided as an exhibit at the hearing.) It does appear that the IEP team had this inventory in hand at their meeting.

10. The IEP team addressed the above deficiencies by developing a transition goal to complete skills inventory and to research entry level job options. **Id.**, p.2. They also decided to have the parent set up a plan with a [REDACTED] job coach for the summer. **PSD 20, 23.**

11. The IEP team's recommendation for the fall of 2009 was to have the student graduate in May, 2009, and move on to the PSTP with continued educational and vocational training. **PSD 23.**

12. The parent wrote an objection, submitted with a similar objection by the student, to any plan to place the student at the PSTP program offered at the regular high school campus. **PSD 24, 25.**

13. The special education program administrator at the alternative high school where the student has previously been attending testified that the student does have bouts of acting out and leaving classes, including one time that he left the campus, but that he had been improving, could follow rules, and had adjusted socially. She interacted with the student on a daily basis, and she felt that the student could benefit from the PSTP of the district in learning job skills and in obtaining further educational coursework in English and math, and that he was ready to do so.

14. The school psychologist testified that he had known the student for over ten years, and had been his counselor for the past two and a half years. He saw the student about once a week on average. He testified that he was familiar with the PSTP and that although it is housed at the regular high school, it is in a separate facility. He further testified that the student had often expressed "no investment" in further attendance at the

alternative high school, often wondering out loud “why am I here?” Upon cross examination, he testified that the student had made threats of harm to women in general and had once bragged of having a bomb to blow up the world. He has exhibited resistance to change but the witness felt the student had shown improvement.

15. The administrator of the alternative high school where the student has been attending testified that she knew the student for one year. She testified that the age range of high school students at the facility is 16-17 years of age, whereas the age ranges of students at the PSTP is 18-21 years. She indicated that the student had expressed frustration that he was not moving on, and she indicated she felt the student had “shut down” or stopped working because of this. She further testified upon cross examination that the student had to adapt to changes every five weeks, and exhibited an ability to do so.

16. The instructor at the PSTP testified that the program is designed specifically for 18-21 year old graduates who need additional assistance with living skills, pre-vocational training, and additional education for transition. The program is based on a community model, with students going to various job placements for part of the day, as a group, including riding public transportation, etc. They also provide ethics training, general job etiquette, living skills such as cooking, budgeting, interactions in public, and so forth. When asked about the possibility of sex offenders being placed in the program, she indicated that there were no current students with that classification. She testified the student/adult ratio is about 2:1.

17. The high school principal testified that the PSTP is one program that he and his assistants oversee, although it is run principally by others. He testified that it is his job to see that all students are safe, and that the facility has a full time resource officer as well

as administrators who ensure the safety and supervision of all children there. He indicated that since the high school is a public school that some children do have criminal records, but that the school is notified of such situations. Any child who is on the sex offender registry is on probation throughout their school career, and “better tabs” are kept on those students. He indicated that no such students are enrolled in the PSTP program at this time. He testified that no weapons or drugs are allowed in school, and the administration has personnel trained in crisis intervention and prevention.

18. The student’s clinical social worker testified that he has consulted on a weekly basis with the student for twenty two months. [REDACTED]

[REDACTED] The social worker testified that he is not that familiar with the PSTP, but felt that the student was doing well at the alternate high school. On cross examination, he indicated that he could not recall any conflict with other students, and that the risk of adverse interactions would depend on the environment. His concern would be raised if the student were in a more mainstream high school facility, but could not say anything about the PSTP or the [REDACTED] program. He suggested that the student could benefit from regular routines, but felt that the student could be transitioned to a new program if it was felt to be better for him academically².

19. A service coordinator testified that she had some familiarity with both the PSTP and the [REDACTED] programs. She is also working to develop a daily living skills plan for the student through Health and Welfare, to be implemented at home. She felt the [REDACTED] program would provide a one on one job coach for the student initially, but that

² Exhibit S1, which is a letter from this witness, somewhat conflicts with this position, but the testimony is more reliable and understandable.

this would be temporary and would change to a maintenance level at some point, usually around six weeks. She felt that a long term program like the one offered at [REDACTED] would be preferable to a program which might end in two years. She testified that home training would be advisable with the education component to be provided with a partial day at the alternate high school.

20. A consultant working with the [REDACTED] program and with the student testified that the student may qualify for Medicaid programming which involve in home services and she hopes to provided the student with an independent living plan and assistance with vocational rehabilitation services by September 1, 2009. She indicated such programs would allow one to one or two to one supported living services.

21. The student's psycho-social rehabilitation worker testified that he had spent about four hours a week with the student for about one year. He stated he had heard the student say that he wanted to remain at the alternative high school. He stated he doubted the student would be able to gain independent living skills in two years. He stated that the student progresses slowly and has difficulty with changes.

22. The student testified that he wishes to remain at the alternative high school, that he wishes to become a computer game designer, and fears the district cannot provide him that training. [REDACTED]
[REDACTED]

23. The parent testified that she has been very active in the student's education as well as his brother's education, as they both received special education services. She indicated her preference was to have the student remain at the alternative high school and receive job skills training through the [REDACTED] program. She expressed her concerns that her son would not be safe from sexual abuse at the PSTP, and also her doubts about the

low level of support which would be available in the program. She alluded to events of abuse in the student's past. She testified that the student's elder brother has received independent living skills training at home, and thinks the district should provide similar benefits to the student.

24. The student's psychiatrist was not available to testify, but a letter expressing his opinion that the regular high school would not be a good fit for the student was admitted as **S2**.

Conclusions of Law

1. Board of Education v. Rowley, 458 US 176, 207 (1982), the first special education case to reach the Supreme Court, defines a free appropriate public education as follows:

Insofar as a State is required to provide a handicapped child with a "free appropriate public education," we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act, and if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

2. As a part of its duty to provide a free appropriate public education to all students, IDEA requires the District to plan for and provide transition services for the student. *See, e.g.* 34 CFR §300.320(b).

3. Each student's educational specific needs, goals, and services are driven by the development of an "Individualized Education Plan" or IEP. 34 CFR §300.320.

4. Transition services are defined at 20 USC 1401 as:

(34) TRANSITION SERVICES - The term 'transition services' means a coordinated set of activities for a child with a disability that--

(A) is designed to be a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests . . . "

5. The educational plan as well as the transition services proposed by the student's IEP team are reasonably calculated to provide the student with specialized education considering his unique needs, and to provide him with training in the areas of education, employment, and independent living skills.

Discussion

An underlying assumption of the IDEA is that an IEP team is the body which can best determine and meet the unique needs of the student. Granted, disagreements do occur, and parents as participants on the IEP team can sometimes feel "outnumbered" when choices are made to which they object.

But, the decisions of the team cannot be considered unassailable, otherwise poor decisions could prevail, as was stated (in a slightly different setting) in County School Board of Henrico County Va. v. Z.P., 399 F.3d 298 (4th Cir., 2005): "To give deference only to the decision of the School Board would render meaningless the entire process of administrative review. *School Bd. v. Malone*, 762 F.2d 1210, 1217 (4th Cir. 1985) (emphasis added)."

In this case, the district moved for due process hearing to submit for approval the IEP team's plan for transition services over the parent's objection. The objections can be summarized as threefold: first, the parent argues that she cannot allow her child to be

placed in an unsafe environment; second, that the plan will upset the student because he has difficulties with change; and third, that a community based vocational plan is better for the student than the district's program of transition services.

Addressing the safety concerns, no substantial evidence was submitted that the PSTP placement would create any risk to the student. Nor are there any reasons to suggest that such placement would be more dangerous than a placement at the [REDACTED] program. The argument made was that sex offenders are allowed to attend the high school and thus pose a threat to the student, who is vulnerable due to his autism spectrum disorders.

The high school principal testified that there are no sex offenders in the PSTP program. Although it is conceivable that such offenders will at some point be present in the public school population, this possibility is insufficient to prohibit a student from obtaining the benefits of the PSTP program. The principal further indicated that he and his assistant principals, resource officer, and other staff, monitor the safety of all students, and they are notified of any student having criminal records. He testified that any student registered as a sex offender is on probation and given additional supervision and oversight.

On the other hand, there was no evidence submitted that the district, or the high school had ever had any problems with sexual abuse by students, or otherwise had failed in their supervisory duties to protect students.

Additionally, the PSTP program is geographically separate from the regular high school and its activities, there is a high staff to student ratio, and most if not all of the transition activities are either off campus or do not involve the regular high school students.

Thus, a generalized fear that the student may be victimized, while important to the parent, and no doubt to school officials as well, should not invalidate the decision of the IEP team to enroll the student in the PSTP. There is simply a failure of any evidence to suggest that this program would be more risky than the alternative high school, or the [REDACTED] program. Sex offenders are or have been enrolled in the [REDACTED] programs as well.

As to the fear that the student will not adapt to the change of campus, the evidence is conflicting. The student has been able to adjust to changes in the past, and his clinical social worker indicated he felt the student could handle such a transition. The parent's witnesses as well as school personnel who have worked with the student indicated that the student had made progress in this area, even though the potential exists for difficulties. Although the parent argues that the psychiatrist's "medical advice" is not to place the student at the high school, it is difficult to place much emphasis on this conclusion. He did not testify, and his opinion is sparse and conclusory. **S2.** It *appears* that he is concerned with the possibility that the student could be dropped into the general student population at the regular high school, and that would be understandable, but no one is proposing that. Since he did not testify, it is hard to place much weight on his letter.

While change is difficult for every student, and much more so for this student due to his disabilities, it remains a constant in life. The evidence indicates that the student expressed boredom at the alternate high school and he has completed the available course work there. The IEP team could rightly conclude that while the student has a difficult time responding to changes, the student at various times has expressed a desire to move forward.

Additionally, the PSTP population is more age appropriate for him, and this fact in itself may help transition the student from the high school setting to more independent living. The point is that at age 21, the student is going to be forced into the adult world, and a gradual transition at age 19 should be a good step forward, although not without its problems and adjustments. The IEP recognizes these factors, and provides for oversight and appropriate aides to assist the student with the transition.

Also of interest, such a transition was proposed in the spring of 2008, but ultimately resisted by the parent. The plan was delayed for one year. The IEP team has not rushed to judgment in this case. This is another indication of the good faith of the team in attempting to fulfill its obligations under the IDEA and provide the student with a plan that will meet his needs.

Thus, although the transition presents some challenges, the team has considered them, planned for them, and have acted responsibly in implementing transition services for the student.

Finally, as to the suggestion that another program is better suited to the student's needs, the evidence does not support that conclusion. The parent's closing arguments indicate that she is very familiar with the program and feels it would be better in the long term for the student. She also has mentioned in argument that there is a long waiting list for vocational training, and that this will be delayed if the student is placed in the PSTP. These assertions may be true; unfortunately, evidence in the record does not support this argument. Based on the evidence submitted on the record, the [REDACTED] program is not radically different from the district's PSTP plan. Nor is it evident why this placement would delay the student's ability to be placed on a waiting list for vocational training.

The [REDACTED] program would introduce changes, some even more radical than the current plan, such as new locations, and different populations which are more adult and varied. The evidence to suggest that the [REDACTED] program is superior to the PSTP program was lacking, except there was some testimony that the student could have a one to one aide for a short time at [REDACTED]. The parent also indicated that the student was going to need help for the long term, and this is true. However, after the student turns twenty one, the district's obligations under IDEA will terminate. The student does qualify for other programs through Medicaid and Vocational rehabilitation, for example. He will have to transition from IDEA services to these more adult programs at some point. On the state of this record, nothing the IEP team has proposed would undermine or defeat such programming³.

The parent also argues that [REDACTED] would be a part of the student's life for many years to come. This could be one possible benefit to placement at the [REDACTED] program immediately, since there would be one less transition over the two years. But indications are that the student will be able to adjust to this transition, and it makes little sense to set aside the IEP team's decision on this factor alone. The student has faced larger challenges and has the potential to adjust to this transition.

Rowley makes it clear that the district need not maximize educational benefit, but must provide adequate services to allow the student to progress. Even were the [REDACTED] program much better, which has not been established, the issue for decision is whether the IEP as drafted is adequate, not maximal. This is not to say that the program is simply adequate, which could be insulting to both district and student; it is to emphasize that


³ It is possible that the parent felt that awareness of the intricacies of the various programs, including governmental programs such as Medicaid, along with other service coordination issues, were matters of common knowledge. Unfortunately, they are not, and the evidence submitted to show the superiority of her plan lacked the detail necessary to allow the hearing officer to set aside the IEP team's decision and put her plan into place.

choosing between a variety of options is part of the IEP process. Most decisions between options involve weighing the pros and cons of the various choices. That there may be some cons to the chosen option does not mean that the option must be discarded.

In summary, the IEP provisions to have the student attend the PSTP program with additional educational supplements does provide transition services which the IEP team has determined are necessary and helpful for the student, as well as providing educational benefit to the student. The educational programming suggested will assist the student with making the transition to an adult world and help him with employability.

Thus, IT IS HEREBY ORDERED that the May 28, 2009 IEP be implemented.

Dated this 28th day of August, 2009.



Guy R. Price
Hearing Officer for the State of Idaho